

September 10, 2001

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: In the Matter of Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98.**

Dear Secretary Salas:

Enclosed please find a letter in lieu of comments of the Association for Local Telecommunications Services (ALTS) pursuant to the Commission's July 11, 2001 Public Notice, DA 01-1648 regarding refreshing the record on petitions for reconsideration of the *Local Competition First Report and Order* in CC Docket No. 96-98. Also enclosed is ALTS September 30, 1996 Petition For Clarification And Reconsideration.

Please file the attached letter and ALTS' September 30, 1996 Petition in the above-captioned proceeding.

Sincerely,

/s/

Kimberly M. Kirby

Attachments

September 10, 2001

VIA ELECTRONIC FILING

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communication Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: In the Matter of Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98.**

Dear Ms. Attwood:

The Association for Local Telecommunications Commissions (ALTS) submits this letter in response to the Commission's July 11, 2001 Public Notice, DA 01-1648 regarding refreshing the record on petitions for reconsideration of the *Local Competition First Report and Order* in CC Docket No. 96-98. ALTS filed its Petition For Clarification And Reconsideration on September 30, 1996 (September 30th Petition). Most of the issues in ALTS September 30th Petition have either been resolved by the Commission or are the subject of on-going Commission proceedings.

However, ALTS strongly urged the Commission to address the unresolved and essential competitive issue of commercial enforcement mechanisms in interconnection agreements as a violation of the duty to negotiate in good faith (referenced as Issue F in ALTS' September 30th Petition). In its initial comments, ALTS urged the Commission to include in its rules a provision stating that it is a violation of the statutory duty to negotiate in good faith where the incumbent carrier refuses to negotiate commercial enforcement mechanisms.

Rather than address this issue outright in its *Interconnection Order*, the Commission listed a number of actions that would be considered a violation of the duty to bargain in good faith and in all other circumstances the Commission would look at the totality of the circumstances. As the Commission is well aware, an interconnection agreement is meaningless without timely implementation. Significant harm to the competitive carrier has been proven time and again where there are clear rules on implementation but those rules are not being carried out by the incumbent.

Thus the Commission should make it clear that refusal of an incumbent local exchange carrier to include ordinary, commercial, self-executing performance metrics in interconnection agreements is a violation of the duty to bargain in good faith. Such provisions are almost universally included in commercial contracts where there is equal bargaining power. The telecommunications environment is different in that the competitive carriers rely on the incumbents' networks. Thus

the need for self-executing performance mechanisms is even more critical than those found in ordinary commercial contracts.

ALTS respectfully requests that the Commission adopt a rule that ILEC refusal to include self-executing enforcement mechanisms in the interconnection agreements is a violation of the duty to negotiate in good faith.

Respectfully Submitted,

/s/

Jonathan Askin
Kimberly M. Kirby
Theresa K. Gaugler

Attachment

CC: (Vis E-Mail)
Michelle Carey

